**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
FIRST APPEAL (ST) NO.9434 OF 2003

The Additional Collector, Thane ...Appellant
Vs.
Ramesh Ganpat Parad ...Respondent

Shri K.K. Tated, A.G.P. for the Appellant.

**CORAM : A. S. OKA, J.**
**DATE : JUNE 06, 2006.**

**P.C.:**

1. Heard Shri Tated appearing for the Appellant.

The Appellant is the Respondent in a Claim Petition under section 166 of the Motor Vehicles Act, 1988.

The Claim Petition was filed by the Respondent.

2. The accident occurred on 18th October, 1995 at 03.00 p.m. at Bhivandi-Wada Road, District Thane. The Respondent was travelling in a tempo owned by the Appellant. The Respondent was working as a labourer and was travelling in the said tempo. All of a sudden the tempo took a right turn and went off the road and dashed against a tree. The Respondent suffered grievous injuries as a result of the accident. The Appellant did not file written statement and therefore, the Claim Petition proceeded without written statement. The Tribunal awarded compensation

of Rs.50,600/- together with interest at the rate of 9 per cent. The claim of the Respondent was of Rs.01,00,000/-. The award of the Tribunal has been made on 24th July, 2002.

3. The learned A.G.P. appearing for the State submitted that due to various compelling reasons the Appellant could not file written statement in time. He submitted that an order of remand may be passed with a view to give an opportunity to the Appellant to file written statement and lead evidence. He submitted that compensation awarded is excessive.

4. I have considered the submissions. The Claim Petition was filed by the Respondent in the year 1996. An order was passed by the Tribunal on 14th February, 2002 directing that Claim Petition should proceed without written statement. The Claim Petition came to be decided five months thereafter. Considering these facts, at this stage indulgence cannot be shown to the Appellant by permitting them to file written statement.

5. Coming to the merits of the case, the learned

Judge relied upon the certified copy of the F.I.R. which was duly admitted in evidence. The learned Judge relied upon the spot panchnama. Considering the oral and documentary evidence on record, the learned Judge has held that the principle of res ipsa locuitor is applicable and therefore, the learned Judge has held that the accident occurred due to negligence on the part of the driver of the tempo which was owned by the Appellant.

6. The Respondent-claimant relied upon discharge card issued by a Government hospital at Thane which reveals that the Respondent was indoor patient for the period between 10th October, 1995 to 28th November, 1995 and he suffered grade three compound fracture of right tibia and fibula. Reliance was placed on disability certificate at Exhibit 25 which shows that the Respondent has suffered permanent partial disability of 38 per cent. The said disability certificate has been duly proved in evidence.

7. The age of the Respondent at the time of accident was 32 years. The learned Judge has granted only a sum of Rs.1,200/- per year on account of loss

of earning capacity, though the disability sustained was 38 per cent. The learned Judge has applied multiplier of 18. Considering all these aspects, the compensation of Rs.56,600/- is very reasonable. Interest granted at the rate of 9 per cent per annum is also consistent with the decisions of the Apex Court. There is no error in the view taken by the Tribunal. Appeal is, therefore, dismissed with no orders as to costs.

**JUDGE**